

STATE OF MICHIGAN
COURT OF APPEALS

In re KIRKENDALL, Minors.

UNPUBLISHED
November 20, 2014

No. 321449
Montcalm Circuit Court
Family Division
LC No. 2012-000558-NA

Before: M. J. KELLY, P.J., and BECKERING and SHAPIRO, JJ.

PER CURIAM.

Respondent father appeals by right from the trial court order that terminated his parental rights to the minor children. We affirm.

This is the second time respondent's appeal has been before this Court. *In re AK & JK*, unpublished opinion per curiam of the Court of Appeals, issued March 27, 2014 (Docket Nos. 318099 & 318100). In the previous consolidated appeals, respondent and the children's mother¹ appealed from the trial court order that terminated their parental rights under MCL 712A.19(3)(c)(i) (conditions of adjudication continue to exist), (3)(c)(ii) (other conditions exist that cause the child to come under jurisdiction and they have not been rectified), (3)(g) (failure to provide proper care and custody), and (3)(j) (reasonable likelihood that the children will be harmed if returned to parent). *Id.* at 1. The trial court also found that termination was in the children's best interest under MCL 712A.19b(5). *Id.* Mother challenged the trial court's statutory grounds and best-interests findings, while respondent challenged only the latter. *Id.* This Court affirmed the trial court's finding of statutory grounds for termination, *id.* at 1-2, but vacated and remanded its best-interests ruling, writing:

Both parents contend that the circuit court erred in its best-interest determination because it failed to consider whether the children had been placed with a relative. A circuit court making a best-interest analysis must "explicitly address each child's placement with relatives at the time of the termination hearing if applicable." *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012). Petitioner acknowledges that the circuit court in this case did not address relative placement and requests that this Court remand for a best-interest finding

¹ Mother is not party to the instant appeal.

regarding relative placement. We agree that a remand is required. Therefore, we vacate the circuit court's best-interest analysis and remand this case to the circuit court to analyze the children's best interests with respect to a relative placement, if any. [*Id.* at 3.]

On remand, the trial court conducted a new best-interests hearing, considered that the children were placed with a "step-brother of the parents," and again concluded that it was in the children's best interests to terminate respondent's parental rights. Respondent now appeals that determination.

"[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App at 41-42 (citations omitted). "This Court reviews for clear error the trial court's . . . ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.*

We conclude that the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests. As directed by this Court, the trial court on three separate occasions considered that the children were placed with a relative and acknowledged that such placement weighed against termination. *In re Olive/Metts*, 297 Mich App at 43. However, the court nonetheless determined that termination was in the children's best interests, a decision that was supported by the evidence and not clearly erroneous.

Regarding respondent, the trial court noted that he, at best, minimally complied with the case service plan over the 16 months of the original proceedings. He failed to allow the release of the records from his ordered counseling and therapy designed to address his emotional stability issues. He also failed to attend a rescheduled parent/child assessment after the first assessment could not be completed because "[t]he parents interactions with the children in the room was chaotic, it was a mess and very difficult and the assessment could not be completed." Respondent also only attended one parenting class and missed 29 of 59 scheduled parenting time visits. When he did attend, he was focused on himself, became frustrated and agitated with the children, and demonstrated no benefit from the services designed to improve his parenting skills. Respondent also failed to make progress toward remedying his housing situation which was "filthy" at the time the children were removed. After spending a period of the proceedings homeless, when respondent and mother finally allowed the Department of Human Services to inspect their new home, "the home conditions [had] deteriorated and got worse over time."

The trial court also considered the children's need for stability and permanence. It noted that respondent and mother had made little to no progress in remedying the children's prospective living environment and had neither sufficiently engaged in nor benefitted from the services designed to improve their parenting skills, despite 16 months of opportunity to do so. The court concluded that, despite the availability of relative placement, the children needed the

permanence, stability, and finality that only termination of respondent's parental rights could provide. In sum, the trial court considered appropriate best interest factors, including relative placement, and its findings were supported by record evidence. Respondent nonetheless argues that the court ignored evidence that "contests, rebuts and/or mitigates" against termination. To the extent such evidence exists, we defer to the trial court's determinations of witness credibility and the weight given to the evidence. See *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Accordingly, we conclude that the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

Respondent also argues that the trial court violated MCR 3.977(I)(3)² when, at the best-interest hearing on remand, it failed to cite to the statutory grounds under which it terminated respondent's parental rights. It is true that the trial court failed to make such a citation at the best-interest hearing on remand and in its subsequent termination order. However, "child protective proceedings are viewed as one continuous proceeding[.]" *In re Hudson*, 294 Mich App at 264, and the trial court properly cited the specific statutory grounds under which it terminated respondent's parental rights at the original termination hearing. Moreover, respondent failed to challenge the trial court's statutory grounds finding in his original appeal. *In re AK & JK*, unpub op at 1. This Court affirmed the trial court's finding of statutory grounds on appeal and only vacated the trial court's best-interest analysis. *Id.* at 3. Pursuant to the law of the case doctrine, "a question of law decided by an appellate court will not be decided differently . . . in a subsequent appeal in the same case." *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001). Because the trial court properly cited the statutory grounds for terminating respondent's parental rights in its original order, respondent failed to challenge that ruling in his original appeal, and this Court already affirmed that ruling, respondent is not entitled to relief on his claim that the trial court violated MCR 3.977(I)(3).

Affirmed.

/s/ Michael J. Kelly
/s/ Jane M. Beckering
/s/ Douglas B. Shapiro

² MCR 3.977(I)(3) provides that, "An order terminating parental rights under the Juvenile Code may not be entered unless the court . . . includes the statutory basis for the order."